

Origin and Administration of the Kansas School Fund

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HISTORY OF THE SCHOOL FUND OF KANSAS.

In beginning a study of the school fund of Kansas, it might be well to recapitulate the various acts by which this magnificent grant was finally received. At the beginning of the Revolution the western lands were owned by the various states; but one by one they relinquished their hold, and it came into possession of the general government. When the lands came into possession of the general government, the question of disposal naturally arose. That this territory would be organized into states, which would rank among the richest of the Union, was not anticipated. The value of the country as part of the United States was not considered. Congress had hoped that the western lands would furnish a source of revenue, sufficient to pay the debts and bear the expenses of the government. This attitude toward the western country was shown at a later time, after the purchase of Louisiana from France, when Jefferson proposed to sell the territory, "reserving that part of the country, commanding the mouth of the Mississippi River". That the United States was to extend across the continent and have over a thousand miles of coast line on the Pacific Ocean, was not yet thought of. However, it devolved upon Congress to provide for the survey of this country. On May 20, 1785, an ordinance was passed providing for the disposal of the ceded territory. This ordinance provided for the survey of the country into

townships and as an inducement to settlers to occupy the land, it reserved "The lot no. 16 of every township for the maintenance of public schools within said township."¹

This grant was first given to the company that settled Ohio. The Company was organized in Boston, March 1, 1786, for the purpose of securing a large tract of land on the Ohio River for the soldiers of the later war. The directors of the Company, Samuel Holden Parsons, Mannasseh Cutler, and Rufus Putnam were given full powers to negotiate with Congress for a purchase of lands. Cutler was sent to New York, where Congress was assembled and began negotiations which led to the Ordinance of 1787, an ordinance for the government of the Northwest Territory. This ordinance provided that whereas "religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."² This pledged Congress to make provisions for education and ten days later, July 23, in a resolution granting powers to the board of treasury to contract for the sale of western lands, it was provided that "lot no. 16 in each township to be given perpetually for the purpose contained in said ordinance (1785); the lot no. 29 in each township or fractional part of a township to be given perpetually for the purposes of religion." The grant for religious purposes was only given in

1. Journal of Congress, X, 121.

2. Mc. Donald, Select Documents. Ordinance of 1787, Art. III.

two cases, in the grant to the Ohio Company and in that to John Cleves Symmes; but section sixteen of each township or its equivalent has been reserved for the benefit of schools in all territory since organized under authority of the United States.

There has been some variation in the form of the grants made to the different states. The grant to the Ohio Company provided that the section no. 16 should be granted "to the inhabitants of such township for the use of schools." In this case the township was granted control of the land appropriated for school purposes. When Illinois was organized, the school grant was given into the custody of the state "for the use of the inhabitants of the township for the use of schools". In this case there was a fund for each township in the state, but kept by the state. The final change in the form of grant was made at the time Michigan was organized. This provided that "section numbered 16 in every township of the public lands"....."shall be granted to the state for the use of schools." By this provision the common school fund in the state of Michigan became a state fund and this has been the form of grant in all states subsequently organized.

In 1848, when the territory of Oregon was organized, another section (no. 36) was added to the grants for school purposes. This additional section was first given to Califor-

nia, in 1850 and has been given to all states organized since that time.

When the territories of Kansas and Nebraska, were organized by the Kansas-Nebraska bill, provision was made for the regular reservation of sections sixteen and thirty-six in each township. In the following year, a constitution for the Territory of Kansas was framed at Topeka which provided that "all funds arising from the sale of public land granted to the State for educational or religious purposes, should be preserved inviolable and undiminished and the income from such funds applied to the specific object of the original grants."¹ The constitutions framed successively at Lecompton, Leavenworth and Wyandotte each had similar provisions. However the Wyandotte Constitution, which was the one finally adopted, added several clauses among which was one providing that "the school lands shall never be sold, until such sale is authorized by a free and fair vote of the people of Kansas, but subject to valuation every three years, may be leased at a per centum established by law."² In the constitution as adopted in 1861, this article was changed somewhat by extending the period of valuation to five years and placing a limit of twenty years upon leases of school land.

1. Constitutions and Conventions, Pt. I, p. 579, Sec. 34.
2. Ibid. 622, Constitution of 1859, Art. VII. Sec. 4.

During the early part of the territorial period, little or no attention was given to formulating any system of schools. The early flood of immigration poured in from the north and the south, on the one hand to make Kansas a free state, on the other to extend and perpetuate the institution of slavery as it existed in the southern states. In this great crisis the matter of education was secondary to the great political issue. But when the state was rescued from the grasp of the south, the free state men turned their attention to internal developments, chief among which is the education of those who are to be its future citizens.

In his message to the first territorial legislature in 1855, Governor Reeder recommended the subject of education to the consideration of the legislature; but the breach between the Governor and the Legislature over the temporary removal of the seat of the government, soon occurred which ended in the petition of the Legislature to President Pierce for the removal of the Governor, as a result of which complications, he was finally removed. Under such conditions the subject of schools and their support was completely submerged to the more pressing issues.

For two years the subject of public schools and land grants lay quite dormant. In 1857 the House passed resolutions, petitioning Congress for a grant of the equivalent of sections 16 and 36 on lands sold by the general government to the Indians and on lands preempted by citizens under the laws

1. House Journal, 1855. p. 15.

of the United States. No action was ever taken by Congress upon this petition and the subject lay completely in a state of lethargy within the State until 1860, when the movement which finally formulated the public school system of Kansas begun.. On December 31, 1859 the Territorial Superintendent of Common schools laid before that Legislature the first report of the condition of the public schools. This report also contained recommendations from the Superintendents of Public Instruction in Michigan, Wisconsin, and Iowa, which approved the sale of the public school land.

On January 3, 1860 the Governor's message to the legislature recommended the subject of education to their consideration. He also protested against a resolution in the constitution framed at Wyandotte, 1859, which provided, that "the Legislature shall make provision for the sale or disposal of the lands granted to the state in aid of internal improvements and for other purposes, subject to the same rights of pre-emption to the settlers thereon as are now allowed by law to settlers on the public lands." According to this provision, no more would be derived from these lands than from any other equal amount of public lands. This part of the message was referred to the "Committee on Education," but a breach between the Governor and the Legislature, occurred

1. House Journal of 1860, pp. 34- 82.
2. House Journal of 1860, p. 22.

over the removal of that body for the session to Lawrence, which rendered legislation upon the subject impracticable.

Early in the year of 1861, after Kansas had been admitted as a state, a resolution was submitted to the "Committee on Public lands" to report on ordinance. April 17, two reports were sent in by the committee, one from the majority, reporting that the grants of Congress had not given a sufficient recompense for the relinquishment of the right of the state to tax the public domain and that the grants to other states had been more liberal, the other from the minority, asserting that the propositions to Kansas had been as liberal as those to any other state. The minority report was taken up and accepted by joint resolution January 20, 1862. An act was passed giving the Governor power to select the lands granted to the state in the "Act of admission" and appropriating a sum sufficient to defray the necessary expenses.² The Governor appointed a committee of three who selected the land granted to the state institutions and that given in lieu of sections 16 and 36, otherwise disposed of. The grants to the state as offered in the propositions of the enabling act were thus confirmed. These propositions provided; First: "that, sections numbered 16 and 36 in every township of

1. Senate Journal of 1861, p 96- 7.
2. Laws of 1861, Chap. 40.

public lands in the State, and where either of said sections or any part thereof has been sold or otherwise disposed of; other lands equivalent thereto and as contiguous as may be, shall be granted to the said state for the use of schools." Second: That seventy-two sections should be reserved for the benefit of the state university. Third: That ten sections should be reserved for the purpose of completing or erecting public buildings. Fourth: That the lands adjoining or contiguous to the salt springs, not to exceed 72 sections were to be granted to the state for its use. Fifth: "That the five per centum of the sales of public lands lying within the state should be paid to the state after deducting the expenses incident to the same, for the purpose of making public roads, internal improvements and for other purposes as the Legislature shall direct."^{2.} The 5% grant by a clause in the state constitution was turned over to the school fund.^{3.}

In accordance with the provision of the constitution that the school lands should not be sold until the sale was approved by a vote of the people, the Legislature passed an act, February 26, 1864, providing that the sale of the public school lands should be submitted to a vote of the people at the next general election.^{1.} This act also provided for the appraisal of the land by committees and established a minimum price of three dollars per acre. Purchasers were to pay one-

2. Stat. at Large, Vol. 12, p. 126.

1. Laws of 1864, Chap. 102.

3. Constitution of Kansas, Art. VI, sec. 3.

tenth of the price of the land down, and the remainder in not more than ten equal installments, bearing interest at ten per centum. The proceeds of the sales were to be invested in interest paying securities of the State or of the United States at the current market price. At the election in the fall, the sale of the school lands carried and the lands were immediately opened for sale.^x

The first investment was made February 1, 1866. During this year over twenty-six thousand dollars was received from land sales and all invested in State bonds, except a one thousand dollar U. S. bond bought at 101. From this time the school-fund has increased annually from the sale of public lands and other sources, and has become a valuable source of income for the support of the common school system of the state, although mismanagement and frauds have doubtless reduced it to half the amount it would have reached had it been managed in a more business like and secure way.

The constitution provides that "the State Superintendent of Public Instruction, Secretary of State and Attorney General, shall constitute a board of commissioners for the management and the investment of the school funds." However, they have

* Note. The vote to sell carried by 3437 to 2186. Public Documents of 1861- 4, abstract of votes in back of book.

been controlled at least to some extent by legislation, though in the first case they successfully contested their independence of the legislature.

On March 2, 1868 the Legislature passed a bill, authorizing the school fund commissioners to invest twenty-five thousand dollars in state bonds authorized to be issued by "an act providing for the issuance and sale of bonds of the State for the purpose of paying the officers and members of the State Legislature and current expenses of the State." The commissioners met and adopted a resolution to the effect that they would invest the amount in pursuance of the House bill, if, after the law had been published, it seemed that they were bound to do so. On receipt of this resolution, the Legislature passed a joint resolution which was duly signed by the Governor, prohibiting the commissioners from investing the funds in any other bonds authorized to be issued by and under any law passed during that session of the Legislature. The commissioners, however questioned the constitutionality of the act authorizing the issue of bonds of the state, for the purpose specified in the bill, and refused to invest in the bonds in question. A petition for a "mandamus" was filed, and the case brought before the Supreme Court. The court in an able and exhaustive decision sustained the commissioners and established the principle that the School-

fund commissioners cannot be compelled to invest in bonds other than those provided by general statute.¹ Had the commissioners vigorously insisted upon this right during the later history of our school-fund, that fund would today be better off by over a hundred thousand dollars.

During this same year another suit was begun which was of importance in its effect upon the school fund of Kansas. The constitution as adopted provided that "the five hundred thousand acres of land granted to the new states under an act of Congress, distributing the proceeds of public lands among the several states of the Union, approved September 4, 1841, "shall be inviolably appropriated to the support of common schools."² The lands were chosen by the committee appointed by the Governor, and were considered as belonging to the school- lands.

Contrary to the provision of the state constitution, the Legislature of 1866 appropriated this land to four railroads of the state.³ State Superintendent McVicar instituted a case in the form of an injunction, restraining the officers constituted by the law of 1866 to consummate the sale, from issuing patents to purchasers of the lands, granting certificates or receiving monies on such sales. The case was first brought in the district court and a formal decision requested, for the purpose of bringing the case before the Supreme Court.

1. 4 Supreme Court Reports, 223-233.
2. Const. of Kansas, Art. VI, Sec. 1.
3. Laws of 1866, Chap. 61.

In the Supreme Court, it was decided by both sides to waive all technical points; and present to the Court for decision simply the question whether or not the title to these lands, as stipulated by the constitution, vested in the State for the benefit of common schools. The Attorney General decided that the State had no right to appropriate these lands to schools without the direct approval of Congress by a special act, as had been done in the cases of Iowa, Wisconsin and Nevada. He held that by the clause in the act of admission, by which Congress refused to recognize "any or all grants as provided in the constitution of the State of Kansas," that the right to transfer this grant to the school fund had been denied.

By this decision the school fund was deprived, if it ever possessed it, of the title to 500,000 acres of land, a loss keenly felt by those interested in the schools of the State. The railroads appropriated the lands to their use as fast as their fulfilment of the contract entitled them to it. However, in 1885, there was \$8101.39 of the proceeds of this land still unused in the railroad fund of the Treasury and 4,599.33 acres of land unsold. By act of the Legislature

1. Webb's Stat. pp. 769-73.
2. Webb's Stat. I. p. 166.

+ Note.- For Iowa, see U. S. Stat. at Large, Vol. 9, p. 117.
 " Wis. " " " 179.
 " Nev. 1st session, 39th Cong. p. 85.

this was transferred to the permanent school fund of the State.¹ This insignificant sum was all that the school fund received from what had promised to be one of its chief sources of wealth.

Thus far the permanent school fund had been invested in State and United States bonds. However, the demand for a new state university building became so pressing that Lawrence, in order to make sure the permanent location of the institution at that place, voted to raise \$100,000 for that purpose.² The bonds were voted, but found no ready market. In 1870 the Legislature passed a bill, giving the commissioners of the permanent school-fund power to invest a sum not to exceed \$100,000 in Lawrence university bonds. The commissioners purchased fifty thousand dollars worth of the bonds at 90 but refused to invest a larger sum in the bonds of any town. They finally purchased an additional \$10,000 worth, but would not consent to jeopardize the school fund for a greater amount. After the university building had been started and the funds exhausted the Legislature passed a resolution, pledging the credit of the State for the amount of \$50,000 in addition to that already invested in Lawrence bonds,³ after which resolution, the school commissioners bought \$40,000 worth more of the Lawrence bonds, increasing

1. Laws of 1885, Chap. 92, Sec. 269.
2. Preamble to Law of 71.
3. Laws of 1871, Chap. 52.

the liabilities of Lawrence to the permanent school fund to \$100,000 as provided in the original act of the Legislature.

This liberality of the citizens of Lawrence laid a considerable burden upon the town. It was evident that Lawrence had assumed an unwarranted burden, which the State should bear. In 1883 Senator Thatcher introduced into and succeeded in carrying through the Legislature a bill for the relief of the city of Lawrence and protection of the common school fund, releasing the town of Lawrence from the payment of the principal of the bonds, when the amount of interest paid should equal the face of the bonds. When this amount had been paid, the regents of the State University were to issue a like amount of bonds running for twenty years and the interest on the same was to be paid from the income of the University endowment fund. It is not necessary to go into the consideration of the constitutionality of this act as Lawrence never fulfilled its requirements, but stopped paying interest on these bonds in 1884 and none has been paid since.² In his report of 1891 and 1892, the State Superintendent of Public Instruction recommended the appropriation of \$100,000 by the Legislature to be used in purchasing and cancelling the Lawrence obligations, thus preserving the two funds entire;³ but the Legislature never acted upon his advice.

1. Laws of 1883, Chap. 42.

2. Gov. Mes. of 1883.

3. Pub. Doc. 1891-2, Vol. II, Supt. Rept. p. 149.

Thus it was necessary for the guardians of the school fund to bring the controversy into the courts where the case is still waiting judicial decision. There is no reason why Lawrence should fail to keep its contract, while there is a legitimate cause for preserving the school fund "permanent and inviolable."

The question of investing the school fund, by 1869 had become a difficult one. The law thus far limited the investment to State and U. S. bonds. At the time the law was enacted, government bonds could be purchased at par and State bonds at a large discount. However, under the continued prosperity of the country, the government bonds by this time, had advanced to a high premium, and the issue of State bonds was exhausted. The constitution forbids the State to issue over one million dollars in bonds, except in time of war.¹ This amount had already been exceeded by \$275,000, and of this sum the school-fund commissioners had secured only \$289,450 worth and the rest was held by capitalists in Wall street. To meet this difficulty, the Superintendent recommended the establishment of a state Sinking fund, sufficient to cancel the bonds of the State, but the Legislature took no steps toward adopting his plan.²

However, many felt that the money should be expended in the State for improvements, and insisted that the bonds in

1. Const. of Kans., Art. XI, Sec. 5.

2. Supt. Rept. 69, p. 25.

Wall street could be carried and the school fund be applied to the internal development of the country. Many schools throughout the State would be established but for the want of funds to build school houses, and to provide for the necessary equipment to carry on school work. A plan was finally hit upon which would aid such districts to establish schools, and at the same time make what has proven to be a satisfactory and secure way of investing the school fund. This plan was incorporated into our school system, when in 1872 the Legislature passed a bill, extending the powers of the school fund commissioners so that they could invest in district school bonds.¹ The first year one hundred and fifty schools were established under the system and over one hundred thousand dollars of the permanent school fund safely invested where it would bring adequate returns, both to the common school fund and to the districts using such monies. At the present time over five hundred ^{million} thousand dollars of the school fund is invested in these district bonds.²

The lands given to the State for school purposes were not well defined and in some instances were only secured after a long and expensive process. However the guardians of the school fund made a manful effort to secure the full amount of lands due the State, according to their interpretation of the

1. Laws of Kans. 1872, Chap. 190.

2. Treas. Rep't permanent school-fund. 1903

"Act of admission." This act provided expressly "that nothing in said constitution respecting the boundary of said state shall be construed to impair the right of the person or property, now pertaining to the Indians in said territory so long as such rights shall remain inextinguished by treaty between the United States and such Indians, or include any territory which by treaty with such Indian tribe is not without the consent of said tribe to be included within the territorial limits or jurisdiction of any state or territory". The grants for school purposes, within territory to be acquired at a later time from the Indians, depended upon the construction given to this clause.

In May 1867 N. G. Taylor was sent from Washington as president of a commission to hold a council with the Osages and draw up a treaty, subject to ratification by the Senate, ceding part of their lands to the general government. Superintendent McVicar met the commissioners at Humbolt and presented the claims of the common schools to sections 16 and 36, which should revert to the schools of Kansas. His claims were disregarded and a treaty signed by the commissioners and the chiefs of the tribe.² By the terms of the stipulation not a single acre was reserved for schools; but the whole domain, with slight exceptions was to come into possession of

1. Statutes at Large, Vol. 12, p. 127.

2. Rept. Supt. Pub. Inst. 1868, p. 12.

a Mr. Wm. Sturgess of Chicago, representing the Leavenworth, Lawrence and Galveston Railway Co., at a price less than twenty cents per acre. Indignation meetings were held over the State and petitions sent to Washington against the actions of the commissioners, and Congress reversed the construction given the clause of the "Act of admission" by passing an act in the form of a joint resolution, securing to the state for the support of public schools, sections sixteen and thirty-six in the ceded Osage district. However the railway Company took the matter before the Department of Interior and the Secretary in a lengthy opinion decided that the ceded lands were not a part of the State, but were held in trust by the United States and the benefit derived therefrom could not be given to the school fund, but must be returned to the Indian tribe.

No further action was taken in regard to the treaty depriving the State of this land until 1875. In his report of that year, the Superintendent of Public Instruction announced that he had no means of determining the amount of school lands sold unless it was reported by the superintendents in the various counties.² In that year he had received reports from only forty-seven counties, so that any report of the sale of the public lands of the whole State would be inaccurate. "Moreover" he continued "the exact amount of lands to which

1. Rept. State agent, 1880, p. 4

2. Supt. Rept. 1875, p. 11.

the state is entitled has never been decided. He further showed that the duty of putting the school land account in proper shape was not properly included within the duties of any office of the State. He recommended that the Legislature authorize the Governor to appoint a land officer to make a list of the lands owned by the State, and also to take measures to secure the full amount of school lands to which the State was entitled by the "Act of admission."

In accordance with this suggestion, the Legislature passed an act authorizing the Governor to appoint an agent to prosecute to final decision the claims of Kansas against the United States, for school lands not received and also to secure the proceeds of the grant of five per cent. on the sales of public lands within the State. Ex-Governor Samuel J. Crawford was appointed as land agent and by the agreement with the State was to receive ten per cent. of the land, and money he should secure as agent for the State, which was the maximum price specified in the act creating the office.²

Mr. Crawford was a man thoroughly acquainted with the situation and exceedingly tactful in his proceedings. In fact so ably did he present his cases that he gained his point in every one, either by a direct presentation of the case before the proper authority or by appealing the case to Congress after it had been unfavorably decided by the

1. Laws of 1877, Chap. 176.

2. Copy of contract in Gov. message of 1879, p. 5.

constituted authority.

He entered upon his duties March 6, 1877 and first took up the loss of the school lands in the tract ceded by the Osage Indian tribe to the general government, and turned over to the railroads without respecting the claims of the school fund commissioners in accordance with the opinion of the Department of Interior, given in 1870. He presented the case of the State to the commissioner of the General Land Office, on June 30 and showed that all precedents were contrary to that decision and as a result obtained a decision from the commissioner of Public Lands, approved by the Department of Interior, reversing the former opinion and guaranteeing to the State the benefit of sections sixteen and thirty-six in the land ceded by the Osages to the general government.

The decision was accompanied by a request that the Governor should select the indemnity lands, and certify the selection in the local land offices in order that they might be withdrawn from market and certified to the State. This would entail an expense, to defray which, it would be necessary for the Legislature to make an appropriation. However public land was being taken up rapidly and to delay the selection until the meeting of the Legislature would cause great loss to the State in quality and location of the lands. Accordingly Governor Anthony called a meeting of the State officers and solicited their advice. They responded and the conclusion

was reached that the interest of the State demanded immediate action. It was agreed to select competent men, commission them as agents of the state, and set them to work according to their instructions.¹ To meet the expenses, the State officers assumed jointly personal obligations by which they were paid. The commissioners selected the land and submitted a report of the lands chosen to the State Auditor, together with a detailed account of their expenditures.² In his annual message Governor St. John recommended an appropriation sufficient to remove the obligations of the State officers, in accordance with which, the Legislature appropriated \$3098.29 to defray the expenses incurred by the said commission.³

When the lists of lands selected by the committee reached the Secretary of Interior, a question was raised by the Solicitor as to the validity of the decision in favor of the claim of the State, in so far as it related to certain Indian reservations and the whole subject by agreement was referred to the Attorney General for his opinion, who, after a careful examination delivered an opinion to the effect that the State was entitled to indemnity for sections sixteen and thirty-six in all Indian reservations except in the Cherokee Neutral Lands;⁴ but as to these he expressed doubts, on the ground that the tract had been sold and conveyed by patent in fee simple

1. Pub. Doc. 1877 & 78, p. 13.
2. Pub. Doc. 1877 & 78, p. 14
3. Laws of 1879, Chap. 14.
4. Crawford's Briefs, Vol. I, p. 195.

to the Cherokee Nation prior to the date of the grant to the State. In this opinion, the department acquiesced and proceeded with the work of certification on all lists except those relating to the Neutral lands.

Mr. Crawford, however was unwilling to yield the point made in regard to the Neutral lands and appealed to Congress for relief. On March 3, 1881 a joint resolution was passed "authorizing the Secretary of Interior to certify school lands to the State of Kansas", providing "that the lands so selected by the State of Kansas be, and are hereby confirmed to said state; and the Secretary of the Interior be and hereby is authorised to certify the same to said state, in lieu of sections sixteen and thirty-six sold and disposed of by the United States within the limits of any former Indian reservations as aforesaid." This resolution as will be seen, not only authorised the Secretary to certify indemnity lands in lieu of sections sixteen and thirty-six in all Indian reservations within the State, but confirmed the title of the State to all lands selected in accordance with the original decision. In pursuance of this resolution and the former decision of the department, thirteen lists comprising an aggregate of 267,898.53 acres were certified to the State.

At the time Mr. Crawford presented the case of the State for the lands sold by the general government, which had been

granted to the State school fund by the "Act of admission," he also presented the claim of the State to the five per cent (5%) on the sales of public lands within the State given for school purposes. As soon as the Indian reservations were declared to be public lands, after the title of the Indians had been extinguished; it was clear that this grant would be easily assured to the State.* The State agent pressed the claim and on December 3, 1877 it was accepted by the First Comptroller of the Treasury. J. A. Williamson, commissioner of the Land Office reported that \$190,566.08 was due the State and demand was made upon the Secretary of Treasury for the same.+

The decision of the Comptroller was rendered May 6, 1880; but the money under authority of the law, having been turned into the treasury, could not be paid except by an appropriation of Congress, which was done by an act approved March 3, 1881.² Of the amount thus appropriated, \$154,489.81 was paid to the state directly, and the remainder (35,778.46) was carried to the credit of the State, on account of a balance claimed to be due the general government, by a direct

* Note.- These lands were the Shawnee, Miami, Osage, Kaw, Cherokee strip, and New York Indian reservations.
1. Briefs of State Agt. Vol. I, p. 196.

+ Note.- A small amount of the claim(\$197.81) based upon the New York Indians Land was rejected.

2. Stat. at Large, Vol. 21, p. 446.

tax levied in 1861.

The five per cent grant was paid annually until 1884. When the account for the fiscal year ending June 30, 1884, was presented, the commissioner of the General Land Office, whose duty it was to certify the same to the treasury, declined to do so; but instead, referred the whole question as to the validity of the comptroller's decision to the Secretary of the Interior for his decision.

This stopped the payment of the annual proceeds from the sale of lands and made it necessary to go over the same ground a second time. After a long contest, the Secretary decided against the State and his decision was sustained by the Attorney General. However Crawford was unwilling to yield and again turned to Congress. Accordingly Congress passed an act granting to the State on account of the five per cent fund arising from the sale of public lands within the State, the full amount due for the year. Since this act the grant has been paid annually, and has amounted to over a million dollars.*

A constitutional question arose in regard to the payment of the State agent. By the terms of the contract as before mentioned, he was to receive ten per cent. of all the lands and money secured for the State. However, the State

1. Statutes at Large, Vol. 25, p. 921.

* Note.- A complete account of the 5% fund is given in table A. of the appendix to this paper.

Constitution provides that the common school fund shall be perpetual and shall not be diminished. The case was submitted to the Attorney General, who brought in a decision that the State agent could not be paid out of Lands or money belonging to the school fund. To avoid this constitutional question the Legislature appropriated out of the general fund of the State, not only the amount due on land and monies secured for the school fund, but also upon all the land and monies secured for the State by Mr. Crawford.* In 1891 Senator Martin was appointed as successor of Mr. Crawford; but when he asked the Governor, State Auditor, and Attorney General to enter into a contract for his services as such agent, the Attorney General considered the law authorising them to make such a contract, unconstitutional and void. An agreed case was made and submitted to the Supreme Court, on application for a mandamus to compel the three officers before named to enter into a contract as required by the Statutes. The decision of the Supreme Court sustained the views of the Attorney General and the office of State land agent came to an end.

1. Atty. Gen. Rept. 1879-80, p. 91-3.
2. Ibid. 1891 & 1892, p. 35.

* Note.- The State agent took charge of all land claims of the State against the United States. The position proved to be the most paying of any in the State. See, appropriations, 1878, '83, '85, '87, '89, etc.

The year of 1876, so far as the history of the school fund is concerned may be appropriately called the year of scandal. During this year some of the most criminal dishonesties perpetrated upon the State, were brought to light. These frauds deprived the school fund of \$14,500 of its money and it was only due to the care of the state officers that a scheme of A. J. Mowrie, representative from the third district in Doniphan County, was disclosed to the public, which would have cost the school fund \$40,000, had it been successfully carried out by its perpetrators. He and several accomplices had fraudulently organized Commanche County and issued the above amount of bonds which they contemplated selling to the school-fund commissioners. However, only two thousand dollars worth were purchased at 85 1-2 when the fraud was discovered. Mowrie took to the brush, but was captured at St. Joseph. He was expelled from the House and brought to trial; but the State failed to secure anything by his prosecution.

In 1872 an election was held in district Number 8 of Rice county and ten thousand dollars worth of bonds voted for the purpose of building a school house to be located at Raymond, a small town within that district. The bonds were sold to the school-fund commissioners at 75, and in the year 1876 were discovered to be fraudulent. Both Houses of the Legislature took it upon themselves to investigate the case and recommended it to the attention of Attorney General for prosecution; but

1. Rept. Atty. Gen. 1876, p. 18-61.

2. Sen. Jour. 254-7; House Jour. 1876, pp. 545-625.

he was unable to secure the money thus lost to the school fund.⁴

In this same year the commissioners were duped into buying twenty-five hundred dollars worth of bonds in Bourbon County, issued for the purpose of building a courthouse. It was found by the Attorney General that the county commissioners had fraudulently issued this amount first as script and then converted it into bonds for the purpose of selling them to the school fund commissioners. This they succeeded in doing and thus deprived the school-fund of the full amount of the bonds. Several times in the later public documents, the attention of the Legislature was called to the deficiency of the school fund to the amount of these bonds. The Governor in his message of 1887 recommended the consideration of these losses, amounting to \$14500. That part of the message was referred to a select committee who recommended that an appropriation should be made, thus preserving the integrity and permanency of the school fund; but the report was never acted upon and the school fund is short that amount.

In public life there are examples of those who are willing to play the part of Judas Iscariot and betray the confidence of their fellow men for a few pieces of silver. No better example of this class can be cited than Samuel Lappin. That he did not succeed was not due to his intentions but redounds to the credit of more honest men, into whose hands a similar trust had been placed. He was a man of unscrupulous principles,

who was in the game for the money and ready to get it by any means, fair or foul. He occupied no prominent place in Kansas politics, but was purely by accident^{*} nominated to the responsible position of Treasurer of State. His principles were immediately questioned by the public; but his honesty was attested by reputable citizens of Nemaha County where he resided and where he had been instrumental in founding the village of Seneca. He had amassed a considerable fortune in a few years and was noted for his shrewd business ability. After a bitter contest he was elected by a bare majority in 1874.

In September, 1876 a lot of bonds purporting to be issued by districts of Mitchell county were sent to the commissioners of the school fund by a Mr. S. Whitcomb of St. Joseph. They were in regular form and the State Treasurer assured the commissioners that he "knew the gentleman"; so the commissioners ordered him to send the money according to instructions. The Treasurer accordingly remitted the price of \$5400 worth of bonds at 90.

A few days later the commissioners received an offer to sell bonds purporting to be issued by school districts in Jewell county, and then owned by a Mr. Manford of St. Joseph. He spoke of the purchase of bonds from Mr. Whitcomb and solicited an offer on his bonds. The commissioners answered the communication and succeeded in procuring \$7000 worth at 90.

A little later in November a communication was received

* Note.- Thirty of the John Francis men bolted after the nomination of Osborn for Governor.

from Richard Milner of Kansas City soliciting sale for \$7500 worth of bonds, issued by school districts in Republic county. The commissioners purchased \$6650 of these bonds and Mr. Lappin remarked that he paid the money over the counter of the State Treasurer's office.

In December, six bonds amounting to \$8500, were received from J. S. Kibby of Kansas City, soliciting sale for the same and asking their immediate return if they were refused. By accident, it was discovered that these bonds were all in the same handwriting and an investigation made, which disclosed their fraudulent character. An investigation of all the bonds purchased was made and it was discovered that both batches from St. Joseph and the one from Kansas City were forgeries. In a few days the disappearance of a brother-in-law of Lappin, a partner of the State Treasurer in a store at Seneca, caused considerable comment. This aroused suspicion that the Secretary of State might have had his brother-in-law, Mr. Scafford as an accomplice in defaulting the State treasury. Investigation confirmed the suspicion. Lappin was placed under arrest and lodged in the Topeka jail. The case was set for the August term of court; but on July 12, Lappin after a second attempt broke jail and escaped. He was traced through the northern part of the United States to Canada and was last heard of in Peru, where he was safe, because no extradition treaty existed with that State and the United States. His accomplice joined him some where on the way and both arrived in Peru, after a

long chase by authorities. Later, Mr. Scafford was caught in Peru, his requisition papers recognized, and he was brought back for trial in 1879. He was tried as an accomplice of Lappin and found guilty; but the case was taken to a higher court, where the decision was reversed and Scafford given his liberty.

Mr. Lappin left a considerable amount of real estate, which was immediately levied upon by the officers of the State. The amount of forged bonds was secured for the school fund, and that fund sustained no loss; though the State had incurred an expense of over twenty-five hundred dollars in the prosecution of the case, connected with this fraud.²

Experience teaches a dear lesson and is commendable, if its cost is not too great. The people are never willing to see public money appropriated to private purposes without a protest. Accordingly an issue of the campaign of 1877 was the security of the public money. The school fund commissioners were attacked by a most scurrilous press for having been negligent in their business relations with the school fund. John Francis, who had taken charge of the treasury since the Lappin affair, was elected Treasurer upon the issue of the security of the public money, while public sentiment was such as to stimulate legislation on that subject.

By an act of March 4, 1876, the State Auditor had been made ex-officio register of the State land office. Acting in this

2. Rept. State Treasurer, 1879 & 1880, p. 38.
1. Pub. Doc. 1878 & 1880.
2. Rept. Atty Gen. p. 26-67.
3. Laws of 1876, Chap. 51.

capacity, he was to keep and preserve complete records, showing the accurate chain of title from the general government to the purchaser, together with all correspondence with any of the departments of the general government in relation to the state lands. Separate tract books were to be kept for the university, the Saline lands, the half million acre grant, the sixteenth and thirty-sixth sections, and lands in lieu of the same for common schools.

When the Legislature met, the subject of the school fund received proper attention. During this session two bills were passed, which were intended to place a check upon dishonest actions, of unscrupulous officers, and give greater security to the public money. On March 3, 1877 a bill was passed requiring the payment of principal or interest on school bonds to be made at the State Treasurer's office, thus removing the opportunity for such frauds as those perpetrated by the late State Treasurers. On the next day a bill was signed which made it necessary for all bonds purchased by the school fund commissioners to be registered by the State Auditor before they should be deposited with the Treasurer.² After this bill was passed, the danger of fraud, by the dishonesty of any one man, was eliminated, and the school fund rendered more secure.

In his report of 1880, Superintendent Lemmon presented to the Legislature a bill that would have formed a more economical

1. Laws of 1877.
2. Laws of 1877, Chap. 72.

system for the management of the school land, if it had been passed by the Legislature. According to the law the land should be appraised every three years, the cost of which was to be deducted from the sale of the land. The appraisers were men appointed for that purpose from the county in which the land to be appraised, was located. The natural result was that neighborly feelings and logrolling had full play in the process. Thus the school land often sold at far less than it was really worth. Governor St. John, in his message of 1879 recommended that the sale and management of all school lands of the States including the lands of the Agricultural college, State Normal school, State University and common school, be concentrated under one general head to be known as the State Land Department. He renewed this recommendation, in his message, the following year, which received the support of the other State officers.

The Superintendent of Public Instruction, in his report of 1880, showed that the expenses of sales and collections on school lands for the past year, had been \$15,681.57. He also gave illustrations of a land department as established in Iowa, Wisconsin, Minnesota, and other states and showed that such a department could be maintained for seven thousand dollars a year, thus saving to the school fund a considerable sum. In addition to this, the appraisement of the land would be more nearly correct, if made by those, who were interested in the school fund, rather than in the individual who procured the land. The unfairness of the appraisement as it had been made,

was clearly shown by the difference between the appraisement of railroad land and that of the school-land. Thus far the price of school land had been about twenty-five per cent less per acre than the railroad lands, notwithstanding that the rate of interest was lower and the time longer on sales of school land. The Superintendent submitted a bill providing for the establishment of a State Land Department as it existed in Iowa; but the Senate moved a substitute which was finally dropped. This negligence on the part of the Legislature has doubtless cost the State 20% of the sales of its school lands made since that time.

As has been noticed before, the investment of the school fund was at first limited to State and United States bonds. When it was found impossible to invest the funds in these bonds, the Legislature passed an act extending the powers of the school fund commissioners so that they might invest in school-district bonds. The fund was invested exclusively in these bonds except in some instances provided for by special legislation. However the value of State and United States bonds increased until they could only be bought at a premium, which would diminish the school fund. The districts of the State, it was estimated would never use more than three million dollars at any one time,* while the school fund would ultimately be several times that amount.

1. Senate Journal, 1881, p. 696.

* Note. Over five million dollars of this fund is now invested in school district bonds.

By the end of the year 1882 the aggregate amount of the school fund was \$2,592,854.35. Of this amount \$607,925 was invested in State bonds, \$390,000 in U. S. Bonds, \$1,410,269.23 in school district bonds, \$100,000 in Lawrence University bonds; while \$84,660.12 lay in the State Treasury, not drawing a cent of interest.¹ Over one hundred thousand dollars of the bonds fell due the 1st of January, and these were immediately paid. Governor Glick, in his message of January 9, 1883 called the attention of the Legislature to the fact that there was \$187,769.95 of the permanent school fund in the treasury uninvested, and probably would not be without proper legislation extending the powers of the commissioners so they could invest in other bonds than those to which they were now limited.² He recommended that they add county bonds to the three already named. The Senate referred the part of the Governor's message on this point to the proper committee, which reported a bill extending the powers of the commissioners to invest in "first mortgages on improved real estate not exceeding one-third its value at six per cent interest, and in city school district bonds or township bonds." The bill passed the Senate and went to the House, where another was substituted for it; extending the powers of the commissioners so as to invest in "bridge, courthouse bonds, or in county, township or city refunding bonds of the several counties, townships and cities of the state of Kansas."³ The substitute bill was accepted by the Senate and signed by the Governor March 5, 1883.

1. Rept. Atty. Gen., 1881 & 1882 p. 34.

2. Gov. Messages, Jan. 9, 1883, p. 7.

3. Laws of 1883, Chap. 143.

However, the commissioners were prohibited from investing in bonds, which, together with the other outstanding indebtedness should exceed 10% of the assessed valuation. The Superintendents in their various reports called the attention of the Legislature to the fact that this clause practically prohibited the commissioners from investing in county, township and city bonds. He recommended in 1903 that the Legislature pass a bill partially removing this restriction, which it did by amending the act of March 5, 1883 so as to raise the limit of outstanding indebtedness of any county, township or city, in which the commissioners might invest the school fund, to 15% of the assessed valuation.¹

In addition to the losses previously cited, there is a considerable loss caused by the defaulting of the various county treasurers. By the law, authorising the sale of the land, the money accruing from the sales should be paid to the treasurer of the county in which the sale was made, who should turn it over to the State Treasurer after the expenses of the sale had been deducted. This law provided that the county treasurer should remit annually to the State Treasurer. This, in a great many cases, was not done.² The Superintendents of Public Instruction frequently protested against the negligence of the county treasurers to report the sales of public lands. These treasurers could apply the proceeds of the land sales to

1. Laws of 1903, Chap. 73.

2. Laws of 1864, Chap. 102, Sec. 13.

their own private uses and owing to the negligence which characterizes the management of the school-fund, they would go out of office, thus releasing their bondsmen and after three years, would themselves be released from any obligation by the "Statute of Limitations". The total loss to the school fund by this means can only be approximated. In the late seventies the State Auditor threw out accounts amounting to \$37,000 which can without question be considered as lost. But the old system is still being perpetuated with very similar results. At the present time about \$70,000 of the sales of school lands is barred by the "Statute of Limitations." Of this sum, no doubt a part will be paid; but it is safe to say that the State will loose one-half of this amount, which will increase the loss caused by the embezzlement of County treasurers to over seventy thousand dollars.

The management of the school land and the proceeds derived from its sale has been uneconomic and unbusiness like. The first mistake was in providing for the sale of the land at a time when there was little demand for it. It is never a good policy to keep a large tract exempt from settlement when it is needed by the people of the state for homes; but there was plenty of other land in the State open to settlement, which was offered in competition to the sale of the school land. The land could have been leased for a term of years and the rent applied to the annual school fund. This, as has been

shown by later experience would have yielded a better income to this fund and at the same time have given the permanent fund the benefit of the increase in value of the land. The State received over 2,800,000 acres for school purposes, which under proper management would easily have brought twenty million dollars. However, all of this except about 675,000 acres , which is located in the western part of the State, has been disposed of and the permanent school fund amounts to only a little over eight million dollars, of which the sales of school lands has yielded less than six millions.*

When the sale of the school land was provided for, a more economic and business-like method of disposal should have been adopted. This would have been effected by the establishment of a "State Land Department" as provided for in several other states. In Iowa, Minnesota, and Wisconsin, such a department was created, which proved to be very satisfactory in its results. Such a course would have been more economic in that it could have been maintained for about one-half the expense incurred under the present system,† it would have been more business-like in that there would be a proper officer who would be responsible for the conduct of that department, and whose interest would be to secure the best returns from the sale of the school lands.

But the Legislature has been extremely negligent and dila-

* Note.- A recapitulation of the annual sales of school land is given in table "B" of this paper.

† Note.- The department as established in Iowa was supported at an annual expense of \$7000, while Kansas has paid as high as \$15,000 for expenses incurred under the present system.

tory in its relation to the school fund. At the past session, the bill providing for the management of the school was dropped and ten days spent in discussing a bill to establish an experiment station for destroying obnoxious insects. Such negligence has, doubtless deprived the permanent school fund of half its principal and the annual fund of an equal portion of its income. The total income from the rent of school lands and the interest on the bonds of the permanent school fund, amounted to about half a million dollars for the year ending June 30, 1904. This income is perpetual and great care should be taken to preserve the principal entire, that the schools may receive this support in succeeding years.

No subject more imperatively demands legislative attention than the school land law. The present procedure by which the appraisal of school land is effected is a veritable abomination. Resulting as it has from the tinkering and patchwork of forty years of disjointed legislation, it is cumbersome, impracticable and extravagantly expensive. The methods are unwieldy and complex and there are instances where the entire proceeds of the sale have been consumed in appraiser's, officers', printers' and witnesses' fees — all provided for and warranted by law. There is still a considerable amount of land unsold, which, with proper management could be disposed of at a price that would increase the principal of the permanent school fund to a total of ten million dollars. However, a practice has grown up by which all school lands are invariably appraised and generally actually sold for the minimum price of

\$1.25 per acre, as established by the laws of 1901,¹ although adjacent lands of private owners, no more valuable, readily command three, five, ten and in some instances even twenty dollars an acre. There is no doubt but that the best interests of the school fund would be preserved by committing the matters of fixing prices to a school land commissioner with power to visit all lands and on actual view and comparison with adjacent lands to fix a price at which each tract shall be offered; and with authority, subject to proper regulations to make sales and terms. That such a plan will ever be adopted is very improbable; but an attempt should at least be made, to secure better protection of the school fund and more business like methods in its management.

1. Laws of 1901, Chap. 350.

Table "A".

5% FUND.

Year :	Amount.
Ending :	
June 30:	
1877.....	\$ 190,268.27
1878.....	2,443.52
1879.....	
1880.....	3,082.96
1881.....	4,155.80
1882.....	73,122.72
1883.....	201,074.36
1884.....	43,137.49
1885.....	26,636.22
1886.....	35,226.97
1887.....	
1888.....	
1889.....	159,749.92
1890.....	253,550.17
1891.....	181,991.23
1892.....	
1893.....	
1894.....	6,545.81
1895.....	1,194.94
1896.....	500.48
1897.....	123.96
1898.....	
1899.....	105.72
1900.....	76.96
1901.....	135.09
1902.....	231.74
1903.....	520.47
Total.....	\$1,182,874.80

Table "B"

RECAPITULATION OF SCHOOL LANDS PATENTED.

Year :	Acres	Amount
1865 :	523 :	\$1855.00
1866 :	2,499 :	13,809.70
1867 :	4,234 :	21,624.55
1868 :	6,624 :	30,817.60
1869 :	10,183 :	46,996.71
1870 :	9,680 :	49,276.84
1871 :	15,037 :	57,834.87
1872 :	21,816 :	92,941.20
1873 :	19,911 :	86,945.47
1874 :	22,044 :	85,501.75
1875 :	21,119 :	89,251.15
1876 :	24,787 :	108,301.49
1877 & 1878 :	56,756 :	226,309.00
1879 & 1880 :	117,557 :	448,010.12
1881 & 1882 :	117,989.88 :	445,852.90
1883 & 1884 :	103,017.09 :	381,302.46
1885 & 1886 :	177,569.00 :	613,940.91
1887 & 1888 :	286,403.44 :	969,643.57
(June 30) 1888 & 1889 :	72,701.27 :	249,435.49
1889 & 1890 :	44,166.71 :	155,189.61
1890 & 1891 :	26,305.50 :	98,457.52
1891 & 1892 :	27,476.64 :	95,146.12
1892 & 1893 :	38,822.09 :	130,766.83
1893 & 1894 :	17,686.00 :	60,801.85
1894 & 1895 :	13,980.75 :	50,148.86
1895 & 1896 :	17,717.69 :	56,159.54
1897 & 1898 :	46,401.21 :	167,344.14
1899 & 1900 :	80,747.33 :	292,051.80
1901 & 1902 :	120,562.40 :	408,925.22
1903 & 1904 :	143,882.82 :	422,115.44
Totals	1,666,202.82	5,956,758.41
Average per acre		3.57.

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